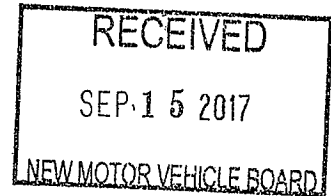
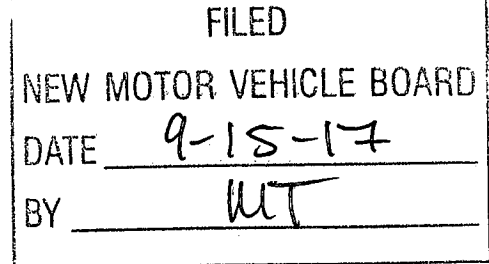


VIA E-MAIL



LAW OFFICES OF GAVIN M. HUGHES  
GAVIN M. HUGHES State Bar #242119  
ROBERT A. MAYVILLE, JR. State Bar #311069  
3436 American River Drive, Suite 10  
Sacramento, CA 95864  
Telephone: (916) 900-8022  
E-mail: gavin@hughesdealerlaw.com

ATTORNEYS FOR PROTESTANT



STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of:

ASIAN PACIFIC INDUSTRIES, INC., dba  
JAGUAR LAND ROVER STEVENS CREEK,

Protestant,

v.

JAGUAR LAND ROVER NORTH AMERICA,  
LLC,

Respondent.

PROTEST NO:

PROTEST

[Vehicle Code Section 3060 (b)(1)]

PR-2532-17

Protestant, Asian Pacific Industries, Inc., dba Jaguar Land Rover Stevens Creek, a California corporation, qualified to do business in California, through its attorneys, files this protest under provisions of California Vehicle Code Section 3060 (b)(1) and alleges as follows:

1. Protestant is a new motor vehicle dealer selling Land Rover vehicles and parts, is duly licensed as a vehicle dealer by the State of California, and is located at, 440 Stevens Creek Boulevard, San Jose, California 95129; Protestant's telephone number is (408) 246-7660.

2. Respondent, Jaguar Land Rover North America, LLC, distributes Land Rover products and is the franchisor of Protestant.

1           3.       Protestant is represented in this matter by Law Offices of Gavin M. Hughes, whose  
2 address and telephone number are 3436 American River Drive, Suite 10, Sacramento, California 95864;  
3 (916) 900-8022.

4           4.       Respondent operates an incentive program entitled Business Builder Bonus Program  
5 ("BBBP"). The BBBP incentive funds available to Land Rover dealers represent 7% of invoice for all  
6 vehicles retailed. Respondent modified the BBBP program performance categories over time.  
7 Currently, Respondent measures Protestant's eligibility for receiving BBBP incentive monies based  
8 upon its performance, as measured by Respondent, under six (6) categories: 1.) Facility Reserve; 2.)  
9 Approved; 3.) Training; 4) In Territory Sales; 5.) Sales Objectives; and 6.) Customer Pay Hours Sold.  
10 Each category counts as 1% toward the total available 7% of invoice, with the exception of Facility  
11 Reserve, which accounts for 2%.

12           5.       Respondent pays dealers the amount of BBBP incentive funds it determines each dealer  
13 is entitled, on a quarterly basis. Dealers qualifying for the full amount of BBBP funds enjoy a  
14 competitive advantage over those dealers that do not receive the full amount.

15           6.       Respondent's refusal to pay Protestant the full 7% of BBBP funds is based, in part, upon  
16 an overly-broad assigned dealer territory designed to overstate Protestant's UIO count and the  
17 corresponding Customer Pay Hours Sold component of the BBBP program.

18           7.       The administration of the BBBP program substantially impacts Protestant's sales and  
19 service obligations and investment and is an inseparable component of the franchise agreement. As  
20 such, any changes to the BBBP program substantially impact Protestant's sales and service obligations  
21 and investment and require statutory notice pursuant to Vehicle Code Section 3060 (b)(1).

22           8.       Respondent recently modified the BBBP program to include the Customer Pay Hours  
23 component, effective April 1, 2017. This material modification of Protestant's franchise agreement  
24 substantially affects Protestant's sales and service obligations and its investment. Respondent was  
25 required to provide statutory notice of this proposed modification, pursuant to 3060 (b)(1), but failed to  
26 do so.

27           9.       The Customer Pay Hours Component materially modifies Protestant's and other JLRNA  
28 dealers' existing service obligations, which adversely impacts the public welfare. The modification,

1 requiring dealers to capture a minimum amount of customer pay service hours, erodes consumer  
2 confidence for customers receiving service work from JLRNA dealers and encourages abuse.

3 10. Respondent does not have good cause to modify or to replace Protestant's  
4 franchise by reason of the following facts:

5 (a) Protestant is a franchised Land Rover dealer under a written franchise agreement  
6 with Respondent.

7 (b) Protestant has made a substantial and permanent investment in the franchise.

8 (c) Protestant has transacted and is transacting an adequate amount of Land Rover  
9 business compared to the business available to it.

10 (d) Protestant fulfills the warranty obligations to be performed by it.

11 (e) The extent of any failure of Protestant to comply with the terms of the franchise  
12 agreement is immaterial.

13 (f) Protestant has adequate motor vehicle sales and service facilities, equipment,  
14 vehicle parts, and qualified personnel to reasonably provide for the needs of the Land Rover buyers and  
15 owners in the market area and is rendering adequate service to the public.

16 (g) The proposed modifications to Protestant's franchise will substantially affect  
17 Protestant's sales and service obligations and investments without good cause.

18 11. Protestant and its attorneys desire to appear before the Board and/or its designated hearing  
19 officer for the purpose of presenting oral and documentary evidence concerning the matters herein  
20 alleged. Protestant estimates the hearing in this matter will take ten (10) days to complete.

21  
22 WHEREFORE, Protestant prays as follows:

23 1. That the Board sustain this Protest and order Respondent not to modify or replace  
24 Protestant's franchise nor refuse to continue its existing franchise and immediately pay Protestant any BBBP  
25 funds withheld pursuant to the terms of the unlawful modification.

26 2. That pending the hearing in this matter, the Board or its secretary or authorized  
27 representative immediately order Respondent not to modify, replace, or refuse to continue Protestant's  
28 franchise unless and until Respondent has established good cause for such actions under the provisions of

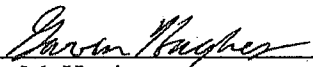
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Vehicle Code Sections 3060 and 3061.

- 3. That a pre-hearing conference be set and the parties notified thereof.
- 4. That Protestant be awarded such other and further relief as the Board deems just and proper.

Dated: September 15, 2017

LAW OFFICES OF  
GAVIN M. HUGHES

By   
Gavin M. Hughes  
Attorneys for Protestant

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1 By US Mail:

2 Thomas J. Loveless  
3 Region VP-Western Region  
4 Jaguar Land Rover North America, LLC  
5 555 MacArthur Blvd.  
6 Mahwah, NJ 07430

7 I declare under penalty of perjury that the foregoing is true and correct.

8 Executed this 15 September, 2017, Sacramento, California.

9   
10 Robert A. Mayville, Jr.

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